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Council for Trade-Related Aspects of Intellectual Property Rights
Special Session

MINUTES OF MEETING

Held in the Centre William Rappard
on 19 July 2006

Chairman: Ambassador Manzoor Ahmad (Pakistan)

Subjects discussed

A. ADOPTION OF AGENDA

1. The seventeenth Special Session agreed to adopt the agenda as set out in WTO/AIR/2867.

2. The Chairman suggested that the Special Session invite the International Bureau of the World Intellectual Property Organization (WIPO) to be represented in an expert capacity, this being without prejudice to the issue of observer status for intergovernmental organizations.

3. It was so agreed.

4. The Chairman said that, with regard to the organization of the meeting, he would offer the floor to any delegation which had anything new to say for the record, including on the key issues, notably those of legal effects and participation. However, he did not believe that it would be useful to have a full rehearsal of known positions on these matters at this stage, given the overall state of the discussions in the Round. Nonetheless, it was his sense that there might be scope for some fruitful further discussion on the issue of notifications during the meeting. While he knew that this question could not be fully dissociated from that of the legal effects or the consequences of a registration, he believed that it would be worth spending some time to see whether Members could identify areas of common ground more precisely, as well as areas where further discussion would be required. The Special Session should also discuss the report that he would make to the TNC.[1]

5. The representative of the European Communities said that his delegation was prepared to work in the way suggested by the Chair. He wished, however, to sound one note of caution regarding the reference made by the Chairman to the state of progress elsewhere in the negotiations. While his delegation was extremely conscious of, and somewhat concerned with, the state of discussions in other areas, it believed that drawing these kinds of linkages could be a dangerous exercise. Concerns with the state of progress elsewhere should not be used as a reason to fail to push ahead with progress in this or any other negotiation which did not form part of the famous triangle of issues. This could lead to a situation where Members would wait for progress in other negotiating groups before moving. Linkages could work both ways.

6. He said that his delegation was still expecting the working document from the Chairman that had been programmed for July. He expressed hope that at some stage in this session the Chair would be able to address the issue of the nature of that working document.

7. The Chairman took note of the comments made by the representative of the European Communities. However, he really felt that Members had not, as yet, made enough progress to enable him to produce a working document.

[1] The Special Session initially held these discussions in informal mode but later decided to incorporate in these minutes the statements that that had been made in informal mode.

B. NEGOTIATION ON THE ESTABLISHMENT OF A MULTILATERAL SYSTEM OF NOTIFICATION AND REGISTRATION OF GEOGRAPHICAL INDICATIONS FOR WINES AND SPIRITS

Notifications

(a) Chair's statement

8. The Chairman said that it might be useful for him to start by briefly setting out his understanding of the state of the debate on notifications and suggesting a number of questions that could be further discussed. Accordingly, he made the following statement:

> 8.1 "First, a couple of general points regarding the issue of notifications. One is that it is clear that the system that the Special Session has been asked to negotiate has to be seen as a whole and that the requirements of the notification phase will, to some extent, depend on what is entailed by the registration of a geographical indication under the system, including the legal effects or consequences of registration. Nonetheless, I think there is sufficient common ground for some further discussion of this matter at this stage to be useful, even if delegations are still far apart on the issue of legal effects.
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> 8.2 "The second general point is that I believe that, whatever the nature of the legal effects or consequences of a registration, the reliability and integrity of the information contained in the register is an important consideration for all. This will of course depend very much on the quality of information notified.
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> 8.3 "Turning now to specifics, it seems to me that there is a wide measure of common thinking that the following elements should be required in notifications under the system, even if the various proposals on the table use somewhat different language on these points:
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> - First, the notifying Member should of course be identified in each notification.
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> - Second, the geographical indication in respect of which the notification is being made should be specified as it is protected and used in the notifying Member.
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> - Third, where the geographical indication is in characters other than Latin characters, the notification should include a transliteration into Latin characters using the phonetics of the language in which the notification is made. I believe that it is common ground that such transliterations would be for information purposes and would not in themselves give rise to any legal effects or consequences that might flow from registration of a geographical indication.
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> - Fourth, I believe that it is common ground that a Member should notify only geographical indications which identify goods originating in its own territory. In other words, a Member would not have the option of notifying geographical indications for which it is not the country or Member of origin, however unlikely doing so might be.

- Fifth, the notification should specify the place in the notifying Member from which the wine or spirit must originate in order to use the geographical indication in question.

- Sixth, it would be desirable to provide for a standard format for notifications that would be adopted by the Council for TRIPS prior to the entry into operation of the system, and this format should provide for notifications to be as simple and brief as possible.

8.4 "Now let me turn to a number of points on which different views have been expressed. In one of the proposals on the table, it is suggested that a notifying Member should only notify geographical indications that it considers meet the Article 22.1 definition and that are protected in its territory and have not fallen into disuse in that territory. Some concern has been expressed that the way this requirement has been put might prejudice the right of other countries to assess independently whether a notified geographical indication meets the Article 22.1 definition in their territories and also for them to satisfy themselves that it is actually protected and has not fallen into disuse in its country of origin. In response, it has been clarified that the proposed requirement would relate only to the situation of the notified geographical indication in the notifying Member, that is to say the country of origin of the geographical indication, and that the right of other Members to assess independently whether the Article 22.1 definition is met in their territories and whether the geographical indication is in fact protected in its country of origin and has not fallen into disuse in this country would remain. A question then is: would this clarification, suitably reflected in textual form, meet the concerns that have been expressed on this point? Or should Members have the possibility to notify under the system geographical indications which they are not sure meet the Article 22.1 definition in their territories and are protected in their territories and have not fallen into disuse in their territories?

8.5 "Let me add a brief word on Article 24.9, the provision which states that there shall be no obligation under the TRIPS Agreement to protect geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country. It has been pointed out that this provision is optional and not mandatory; that is to say, it does not prevent countries from protecting such geographical indications. Two of the proposals on the table would preclude the notification of such geographical indications under the register. My understanding has been that it is not intended that this would impair the right of any Member to protect such a geographical indication if it so wished, but only that the register would not be available for facilitating such protection. It would be useful to know if such understanding is correct and whether this would help address any concerns regarding this matter.

8.6 "Another point on which different views have been expressed is that of the provision of information on the legal basis in the notifying Member for the protection in its territory of the notified geographical indication. Three approaches to this question are set out in the proposals on the table. One would require a reference in each notification to the legal instrument by which the geographical indication is protected. This has been criticized on the ground that it could put those Members that do not have registration or recognition systems by which lists of protected geographical indications are generated at a disadvantage in notifying geographical indications under the multilateral system. Another provides for the notifying country to have the option of either doing this or providing a statement "executed under seal

by the government of the notifying Member" that the geographical indication conforms with the Article 22.1 definition and is protected by law and has not fallen into disuse in its territory. My understanding is that the second option in this proposal is an attempt to take into account the concerns that I have just mentioned about an obligation to specify a particular legal instrument. The third proposal does not mandate the provision of information on the domestic legal basis for the protection of a notified geographical indication, but allows such information to be provided in notifications on an optional basis. The questions which Members might wish to explore further are how to accommodate the concerns that have been expressed about the different legal systems and laws by which geographical indications are protected, while at the same time ensuring a sufficient degree of integrity and reliability of the information to be notified under the system. As I mentioned, one of the proposals, namely that of Hong Kong, China, seems to have made an attempt to address this concern and it would be useful to have an exchange of views about the advantages and disadvantages of its suggestions on this point.

8.7 "Now let me turn to the question of translations of notified geographical indications. This would seem to have two aspects. The first is whether translations of the notified geographical indication into one of the working languages of the body administering the system should be provided by the notifying country where available; that is to say, if the system were to be administered by the WTO, should there be a requirement to make available any translation into one of the three WTO languages of a notified geographical indication for which the language of origin is another language? This, as I understand it, would be simply for the purposes of information and to facilitate understanding in the administering body and in other Members of what is being notified.

8.8 "The second question relates to the issue of whether the notifying Member should also have the option of notifying suggested translations of the geographical indication into other languages. This is provided for in one of the proposals on the table. There has been some discussion of this, with some concern expressed about possible impairment of each Member's freedom to determine what is the appropriate translation of a geographical indication in its territory. In response, it has been said that such a provision would not have such an effect, and that the ultimate decision would remain with national authorities. Some questions which it might be useful to explore further in this connection include:

- In the proposal that includes such a provision, is it intended that the legal effects that, under that proposal, would flow from an unopposed registration would not apply to the suggested translations and that those translations would only be provided for information purposes without such legal effects?

- How does this matter relate to the provision in Article 23.1 that the protection of geographical indications for wines and spirits should apply where the geographical indication is used in translation?

8.9 "Another issue is whether the notification should specify the product for which protection is sought, namely whether it is a wine or a spirit. This would seem to be called for by two of the proposals on the table, with the third seemingly silent on this point. Are there any differences on this question or is it agreed that each notification should specify whether the notified indication refers to a wine or a spirit?

8.10 "There is also a question as to whether there should be a requirement to provide information on the quality, reputation or other characteristics of the goods which justify its protection as a geographical indication in terms of Article 22.1 of the TRIPS Agreement. One of the proposals suggests the inclusion of such information in the notification, whereas the others are silent on this point.

8.11 "There is also the issue of whether, and if so how, the notification should specify the owner of the geographical indication or the persons entitled to use it for their production in the notifying Member. One proposal requires notifications to include the name and contact details of the owner of the geographical indication; another gives each notifying Member the option of including information on persons entitled to use the geographical indication in its territory; and the third is silent on this question. Questions are: is this type of information necessary or desirable for a functioning system; and, if so, should it be optional or mandatory and how would it best be phrased?

8.12 "Finally, I would like to refer to the question of dates, that is to say the provision of information, where available, on the date on which a geographical indication has obtained protection in its country of origin and on any date on which that protection will expire. This type of information is seen as a mandatory element of a notification under two of the proposals and an optional element under the third. I think that it is recognized that such information will not be available in all cases; it will depend on the type of protection applicable in the country of origin. If the requirement were to be drafted in such a way as to recognize this, could it be generally acceptable?

8.13 "This then is an attempt, without purporting to be comprehensive, first to flag a number of elements for notifications under the multilateral system for which there would seem to be a significant measure of common ground, even if precise language differs and, second, to identify a number of possible elements for which there would seem to remain differences which need to be explored further.

8.14 "If participants would find it helpful, it might be useful to take up each of these points in turn in informal discussion with a view to establishing more clearly where common ground can be found and any points on which further work would be required in order to close gaps. Such an exercise would of course have to be against the background of the point that I mentioned at the outset, namely that the requirements of the notification phase cannot be settled in isolation from that of the system as a whole and that there is therefore a limit to how far the discussion can be taken."

(b) General points

9. The representative of the European Communities underlined his delegation's belief that the issue of ensuring the reliability and integrity of the information contained in the register was essential because the legal effects that would flow from the system would be based on the contents of the notifications.

10. He said that the EC proposal simply sought to facilitate the protection already available under the TRIPS Agreement and therefore it did not create any new obligations. However, there were certain elements, such as the date of protection or legal instrument, that were relevant for decisions on the protection of geographical indications in accordance with the obligations set out in Section 3, Part II of the TRIPS Agreement. These elements would be offered not to establish new obligations

but to facilitate the obtaining of protection and also to help national courts and authorities in the decisions they would have to take based on the principle of territoriality.

11. The representative of the United States said that the text containing the Chairman's statement on elements for notifications was very detailed and contained a number of questions that had been raised with respect to this issue. It could therefore provide some interesting topics for discussion. As his delegation had seen this text for the first time at the present meeting, it would only be in a position to make some general preliminary comments on a number of the elements raised by the Chairman. For any further consideration, including in regard to the language used by the Chairman to characterize these elements, his delegation would need to have more time for reflection in the capital.

12. As a first comment, he said that his delegation had trouble with some of the wording used by the Chairman to characterize what he phrased as points where there seemed to be "a wide measure of common thinking". In addition, it would be difficult to proceed only on a point-by-point basis as many of these issues would raise broader questions, including in relation to the key issue of legal effects.

13. As to the EC's comment on the issue of reliability or integrity of information, he said that the European Communities was looking at these two terms only in the context of what they had proposed. While his delegation had no trouble with ensuring that the information provided under the system was reliable, it saw such goal in a way compatible with the purpose of creating a system that would facilitate protection within the mandate, as established in the joint proposal. On the other hand, the EC's perspective on reliability and how they would achieve it was geared to providing extraterritorial protection for geographical indications. Such an approach would lead Members back to the whole debate of how Members saw legal effects and consequences.

14. The representative of Argentina agreed with the Chairman's statement that the system being negotiated had to be seen as a whole and that the requirements of the notification phase made sense in the context of the legal effects provided for in each proposal on the table. She believed that the elements to be notified under the joint proposal were sufficient for the establishment of a system to facilitate the protection of geographical indications for wines and spirits. Her delegation was only in a position to make preliminary comments on the elements raised by the Chairman and, given the complexity of the issues, would need to send the text to the capital for further analysis.

15. The representative of Australia echoed the Argentinean and US delegations' point that there was an underlying systemic issue related to the notification elements put forward by each proposal. One of the systemic concerns his delegation had with the Chairman's statement on notification was that, while there might be a commonality of assumptions in relation to the elements for notification, his delegation's understanding of their effects was very different. Therefore, there was a tension in this exercise. His delegation could, however, try to match the Chairman's good efforts by providing some preliminary comments, which would be without prejudice to any further comments his capital might make and that might even reflect a different view.

16. The Chairman said that he had taken good note of these general points and reassured Members that whatever they said would just be preliminary and without prejudice to their positions. He also reiterated his comment that the system being negotiated had to be seen as a whole and the notification phase would depend on the legal effects.

(c) Discussion of possible elements

(i) The notifying Member

17. No comments were made.

(ii) The geographical indication itself

18. The representative of the United States said that, consistent with the joint proposal, his delegation believed that the identification of the geographical indication was an essential element in any system of this nature. He had, however, some difficulties with the language used by the Chairman to characterize this element in saying that "[t]he geographical indication in respect of which the notification is being made should be specified as it is protected and used in the notifying Member". His delegation was particularly concerned with the use of the expression "as it is protected" as this was an aspect potentially connected to the issue of the legal effects and consequences. He believed that the joint proposal provided for a better articulation of this point in its paragraph 3.2(b), which required the notification to "identify the geographical indication as it appears on wine or spirit goods in the territory of the notifying Member." The reason the joint proposal used that type of articulation was because the word "protection" could imply, for example, the protection of certain translations that, while they could be protected in one Member, would not be appropriate in other Members. However, despite such concerns, his delegation had no trouble with the general concept of having to identify the geographical indication. It was just a matter of articulating that concept in a way that would be prejudicial neither to certain Member's systems nor to their positions regarding legal effects or consequences.

19. The representative of the European Communities said that his comments were only preliminary and subject to further reflection in Brussels. On this element, he could certainly agree with the United States that it could be read as meaning that the geographical indication had to be protected in the country of origin. On this matter, which in any event was dealt with in another of the Chair's elements, his delegation's position, as indicated in paragraph 2.1(b) of the EC proposal, was based on Article 24.9 of the TRIPS Agreement. According to this Article, there was only an obligation to protect geographical indications which were protected in their country of origin and which had not fallen into disuse in that country.

20. The representative of the United States reiterated his delegation's concern with the expression "as it was protected", which seemed to imply not only the information that a term was considered a geographical indication in the notifying country, but also, and here resided most of his delegation's concern, how it was protected. Requiring the specification of how a term was protected in the country of origin would create a link to the specific mechanisms and systems used in the notifying country, which might be entirely different from other WTO Members, because in this area of law there were many different TRIPS-compliant systems.

(iii) Transliteration into Latin characters

21. The representative of Japan said that his delegation believed that the issue of notification was closely linked with that of legal effects and that its comments would only be on a preliminary basis.

22. As for transliteration, he said that this was an example of the linkage to legal effects and, consequently, to the burdens on countries. If a geographical indication had been notified in non-Latin characters, Japan would be required to transliterate the non-Latin characters into Latin characters in order to consult internally on whether the notified geographical indication conformed with the TRIPS Agreement. For example, if a geographical indication had been notified in Chinese characters with a transliteration, it would still be necessary for the Japanese authorities to transliterate it into Latin characters because of differences in pronunciation of Chinese characters by the Japanese and the Chinese.

23. The representative of the European Communities said that his delegation agreed that notifications should include transliteration into Latin characters. He recalled that the EC proposal's language on transliteration and translation was taken from the provisions in the Chair's note contained

in document JOB(03)/75 of 2003. Those provisions were not in brackets, which therefore conveyed the idea that Members were close to agreeing on these elements. Hence, the more Members departed from what was in that document, which was basically copied in the EC proposal, the more they would be moving away from elements that were close to an agreement.

24. His specific comments would be directed to the Chairman's statement that "transliterations would be for information purposes and would not in themselves give rise to any legal effects or consequences that might flow from registration of a geographical indication." The issue of transliteration was obviously linked to the question of translation and, in fact, often the transliteration would coincide with the translation. Transliterations and translations could be relevant for the legal effects flowing from the register. It was important to indicate that the territoriality principle would apply to translations and transliterations for it was up to national authorities to decide what was the proper translation or transliteration of a notified term and therefore which translation or transliteration would carry the legal effects that the register would have. The key message was that territoriality would be ensured and that the final decision would remain in the hands of national authorities. However, legal effects would flow from transliterations or translations simply because the system as such was intended to facilitate the protection set out in Articles 22 and 23 of the TRIPS Agreement. In fact, Article 23 itself already contained a specific reference to translations. In Article 22, the standard was whether the consumer was misled or whether the use of the geographical indication by a third party constituted an act of unfair competition. This provision also covered the use of transliterations or translations. Therefore, despite the fact that all Members agreed that the decision on these elements would remain in the hands of the national authorities, this sentence in the Chairman's statement would need to be redrafted in order not to exclude the fact that there could be legal effects flowing from the use of transliterations and translations. That being said, he agreed that a transliteration provided by the notifying Member would certainly be useful, especially for other Members' national authorities when taking their final decision on this matter. This could contribute to the reliability and integrity of the system.

25. The representative of the United States said that it was exactly because his delegation, as a co-sponsor of the joint proposal, felt strongly that the facilitation of protection should be carried out within the mandate of Article 23.4 of the Agreement that it had decided to include in paragraph 3.2(d) of the joint proposal that any transliteration would be "for information purposes only". There was a difference between transliterations and translations. While his delegation did not see a need for translation in the notifying phase because of its link with legal effects, it saw, on the other hand, the utility of providing for transliteration for the purpose of indicating what the information that had been notified was. He also said that his delegation could look at ways to define the phonetics in a way that could accommodate the concerns of the Japanese and other delegations. The reference to "for information purposes only" was an important element in the design and implementation of the system.

(iv) Only GIs which identify goods originating in the notifying Member's territory

26. The representative of New Zealand said that the text containing the Chairman's statement on notifications would give Members a good basis for their work. She further said that in accordance with the mandate, the term "wines and spirits" should be used instead of the term "goods".

27. The Chairman confirmed that his statement indeed concerned "wines and spirits".

(v) The place in the notifying Member from which the wine or spirit must originate

28. The representative of Canada said that all her comments would be preliminary. Her delegation would not have any problem with the concept of this particular element but it would, in any case, suggest that the language used to describe it be closer to the language of Article 22.1 of the Agreement. Therefore, she would support language such as that used in paragraph 32(c) of the joint

proposal saying that the notification shall "identify the territory, region or locality of the notifying Member from which the wine or spirit bearing the notified geographical indication is identified as originating."

(vi) The use of a standard format

29. No comments were made.

(vii) Article 22.1 definition, GI protected in its territory and not in disuse

30. The representative of the European Communities said that it was essential to bear in mind that Members wanted to be sure that the system would be reliable and only contained terms that were geographical indications. Paragraph 2.1(a) of the EC's proposal required that the indications notified meet the definition specified in Article 22.1 of the Agreement. As pointed out by the Chairman in his statement on notifications, such a requirement should not prejudice Members' rights to independently assess whether, according to their rules, the notified geographical indication met the definition in Article 22.1. At the same time, Members had all implemented that same definition in their respective legislation, so the result of that assessment should in principle converge with the assessment of the Member notifying the geographical indication. The intention of the EC proposal on this aspect was certainly not to take away from the hands of the examining Member the right to render the final decision on whether or not the geographical indication met the definition.

31. He said that the other part of this element related to Article 24.9 of the TRIPS Agreement, and was also connected to the need to make sure that what would be contained in the system was indeed a geographical indication, particularly given the legal effects that would flow from it. This was in the interest of all Members because all proposals had legal effects, although in different degrees, including the joint proposal, which foresaw an obligation for national authorities to consult the register and take account of the geographical indications listed therein.

32. The representative of Australia expressed doubt as to whether the wording used by the Chairman really reflected the concerns that had been raised in relation to the proposed notification requirements, namely that the notified geographical indication met the Article 22.1 definition and was protected in its country of origin. The clarification to which the Chairman drew attention in this regard was that the requirement for providing this information would not prejudice the fact that it was up to each Member to decide whether a term met a definition in its territory in accordance with the principle of territoriality. She was, however, not sure that that clarification would indeed solve the problem. She therefore wished to rephrase the question that the Chairman had posed at the end of his statement on this element to ask: How was the provision of this information not entirely redundant? For example, if a term was a geographical indication in a Member's territory, then presumably it met the definition of a geographical indication in that Member. If this was the case, why would Members have to provide such information? She wondered whether the purpose of providing this information was not for another reason that would relate to, for example, legal effects.

33. The representative of the United States said that his delegation shared the concern expressed by Australia. This point raised many important questions that had been mentioned in other contexts with respect to consequences and legal effects, particularly fundamental issues such as extraterritoriality. He expressed concern with the fact that the proposals could be written in a way that would imply that notifying Members would be able to declare that a term met the definition in Article 22.1 in a somewhat broad sense. If a country was going to notify a geographical indication without a good faith belief that the term would indeed be a geographical indication under Article 22.1, it was not clear how that term could be a geographical indication at all. In fact, as stated by Australia, providing this information could in fact be redundant, unless it was made for a different purpose. In this regard, it was important to remember that the EC proposal seemed to use a geographical

indication determination by one Member as a justification for obtaining legal effects in other Members, which was one of the fundamental problems his delegation had with that proposal. Hence, while the clarification made by the Chairman in this regard was helpful and carefully articulated, he nonetheless believed that this was one area raising a large number of issues and which would touch on the fundamental principles of intellectual property raised in the debate about consequences and legal effects.

34. The representative of Switzerland said that his delegation had not taken the floor on the first part of the discussions on points of convergence because it indeed converged on those points as outlined by the Chairman. With regard to the specific element of this sub-heading, it took the view that geographical indications notified by Members should normally have undergone an assessment by that Member as to whether they met the TRIPS criteria set out in Article 22.1, since it would be in their interest to ensure the reliability of the system. On the other hand, because performing such an assessment would still be the responsibility of each Member, he therefore saw no need in the context of the register to establish complicated or burdensome criteria for this at the multilateral level as long as the obligations under Section 3 of Part II of the TRIPS Agreement were respected by Members at the national level when making such assessments. As to the notification of a geographical indication by a Member, his delegation believed that this should not prevent other Members from examining whether that geographical indication fulfilled the relevant TRIPS criteria for protection in their territories or it had or had not fallen under an exception. It had been pointed out earlier by other delegations that the territoriality principle applied and that the GI register would not change this situation. He believed that this was a point of emerging convergence.

35. The representative of Argentina agreed with the delegations of Australia and the United States that including the compliance with the Article 22.1 definition as a notification element could be redundant and linked with the issue of legal effects. She recalled that the preamble of the joint proposal specifically stated that the purpose of the system was to facilitate the protection of geographical indications for wines and spirits, consistent with Section 3, Part II of the TRIPS Agreement and that, as provided for in Article 1.1 of the Agreement, each Member was free to determine the appropriate method of implementing the provisions of that Agreement within its own legal system and practice. She said that such language should be sufficient to address the concerns that had been raised regarding the issue of the definition as well as other aspects.

36. The representative of Chile agreed with the delegations of Argentina, Australia and the United States that including these elements would be redundant and linked with the issue of legal effects. He said that the joint proposal would have both legal and *de facto* effects. The former would be the obligation for national authorities to consult the database, while the latter would be the fact that these authorities would probably see the notified geographical indications as valid. Given these effects, in particular the *de facto* ones, Members had to be careful with the language used in the proposals, so as to avoid that national authorities were misled and hence granted protection in cases where there was no eligibility for protection. He was pleased to hear from the delegates from the European Communities and, to a certain extent, Switzerland, that the responsibility for all these issues of translation, transliteration and GI protection remained within the competence of each Member, therefore respecting the principle of territoriality.

37. The representative of the European Communities said that he interpreted the view expressed by some Members that these notification requirements were redundant as an acceptance that any term that these Members might notify into the system would be a geographical indication in accordance with the definition under Article 22.1 of the Agreement. If that was indeed the case, then, on the substance, he would agree with the point made by these Members. However, his delegation continued to be of the opinion that it would make sense to keep such requirements. This was also linked to one of the legal effects in the EC proposal, namely the possibility for the examining Member to challenge

a notification based on the fact that the geographical indication did not meet the definition of Article 22.1 of the TRIPS Agreement.

38. He agreed with the Chairman's understanding that, while the provision in Article 24.9 of the Agreement was not intended to impair the right of any Member to protect a geographical indication no longer protected in its country of origin if it so wished, the register would not, however, be available for facilitating such protection.

39. The representative of the United States recalled his delegation's point that the EC's and Hong Kong, China's respective proposals to include the specific legal instrument as a notification requirement would discriminate against WTO Members with no systems such as those used, for example, by the European Communities, which included government-issued certifications. Although this point pertained more to the next sub-heading, he saw it as wholly linked with the elements under discussion on this sub-heading. The joint proposal was concerned with selecting mandatory elements for notification that would not only facilitate GI protection but could also be easily provided by all participating Members in view of the fact that there were different TRIPS-compliant ways to protect geographical indications, such as through unfair competition or common law trademark systems. This was why his delegation saw no need to provide information on any specific legal basis in the country of origin. He recognized, however, that such information could be useful in certain circumstances and it would therefore be fair that it could be provided, but only as an optional matter, by Members which had such systems. This was therefore an important concern for his delegation. He could also understand that Members proposing systems that provided for extraterritorial legal effects and with specifically enumerated grounds for denying GI protection might have a different view and would not see his concern as a problem.

(viii) Legal basis for the protection of the notified GI

40. The representative of the European Communities said that his delegation agreed with the United States that somehow the elements discussed under previous sub-headings and this one were linked. The purpose of requiring a reference to the legal instrument by which the geographical indication was protected in the notifying Member, as required in paragraph 2.2(c) of the EC proposal, aimed at providing the necessary elements of proof to the examining Member that this was indeed the case. This was a reasonable element for, as indicated in the Chairman's statement, the fact that the geographical indication was not protected in the country of origin would not prevent Members from protecting it, but the register would not be available for providing protection in such cases. However, this would be done without prejudicing the way in which a geographical indication should be protected across the world. His delegation was indeed aware that all WTO Members were free to determine the most appropriate methods of implementing the TRIPS provisions in accordance with their respective legal systems. Such a principle would not be changed by the EC proposal's register, which contained quite open language on this element with the purpose of making clear that the intention was precisely to provide the information to the examining authorities so that they could ascertain whether the hurdle of Article 24.9 of the TRIPS Agreement had been cleared. Paragraph 2.2(c) of the EC proposal mentioned that the instruments of protection were given only as examples. Hence, the reference to "the relevant national or regional legislative or administrative text or the relevant judicial decision" would not exclude other ways in which the geographical indication could be protected in the country of origin.

41. The representative of Argentina associated herself with the comments made by the United States about this sub-heading. She disagreed with the European Communities' argument that this element was relevant in the sense that it would help examining domestic authorities. She believed that there should be no examination through the system and, even if such elements were relevant, any examination should only be made in accordance with the national legislation of the WTO Member where the protection of the notified term was being sought.

42. The representative of Australia supported the points raised by Argentina and the United States and said that he saw this element as connected to two key issues. The first was the existence of different legal systems for GI protection and the second was legal effects. He referred back to the many statements that his delegation had made previously that legal effects were central to some elements of the notification procedure, and this was one of them. He suspected that under this element there was a different agenda by some Members to include extraterritoriality.

43. The representative of Chile said that the joint proposal had suggested that this element of notification be optional, so as to reflect the great diversity of systems for protecting geographical indications. In practice, Members able to provide such information would do so because this would be in their own interest. He expressed concern with the language used by the Chairman in his statement on elements for notifications in that it seemed to give the impression that the Hong Kong, China proposal in this area was an acceptable option. That option would be unnecessary, as government-made GI notifications, as such, would be sufficient, as they were in other areas of the WTO. It should be presumed that governments would notify geographical indications in good faith and would only notify terms that were geographical indications in existence in their territories. Therefore, including a "statement executed under seal by the government of the notifying Member" as a notification element, as proposed by Hong Kong, China, would not be necessary. In fact, this was not a prerequisite in other areas, for example in the context of the notifications made under the so-called "Paragraph 6 mechanism" administered by the TRIPS Council in the area of public health.

44. The representative of Switzerland said that his delegation wanted a reliable system that would ensure the integrity of the information contained and which would, therefore, achieve the goal of facilitating GI protection. Making this notification element mandatory was part of the achievement of such a goal. It could be undertaken as flexibly as possible, taking into account all the systems of protection that Members had chosen based on the flexibility of Article 1.1 of the Agreement. In this respect he believed that the Hong Kong, China proposal contained interesting suggestions as to the form such information could take. Such a proposal cited, as possible sufficient information on the legal basis, either "relevant domestic legislation or judicial decisions protecting the geographical indication in the territory of the notifying Participating Member" or a "statement executed under seal by the government of the notifying Member" to that effect. This was a very flexible approach to the treatment of this element.

45. The representative of Australia expressed concern that the issue of reliability of information had been disingenuously and misleadingly used as a disguise to put notification elements with legal effects into the system, in line with the agenda of some proponents. He fully agreed with Chile that if information was notified by governments it would apparently be reliable. This was the understanding of the joint proposal and its treatment of this element satisfied the key requirement for reliable information. To assume otherwise would be tantamount to believing in the unlikely existence of a group of rogue states lining up to notify bogus geographical indications.

46. The representative of New Zealand said that her delegation also shared the concerns raised by Australia on the point of reliability. She had never heard any reliability-related concerns being voiced against notifications made in other areas of the WTO, which showed that Members had good faith in the information being provided. She recalled that as a result of the review of Members' implementation of the TRIPS Agreement as a whole and the specific review under Article 24.2, Members had already provided relevant information on their compliance with the Agreement, including on the corresponding implementing legislation, so this would not need to be repeated in a notification to the system.

47. The representative of Canada associated herself with the points made by Argentina, Australia, Chile, New Zealand and the United States. On the comment made by the European Communities with respect to their proposed examination and opposition stages, she said that these aspects

encompassed to a large degree some of the concerns that had been expressed in relation to all the elements of non-convergence discussed under the above sub-headings. Article 23.4 of the TRIPS Agreement required the establishment of a system of notification and registration of geographical indications and made no reference to any examination or opposition procedure. For her delegation, the notification stage was simply aimed at identifying the domestic geographical indications of a Member for the purpose of facilitating their protection. She therefore did not see any point in declaring that a geographical indication met the definition and agreed that this was a redundant element. Similarly, there would also be no need to require information on the legal instrument, although the joint proposal had the flexibility to allow the submission of this information if and when it was available and appropriate. As already pointed out by some delegations, all these points were connected to the issue of the legal effects and consequences of providing such information. The joint proposal would not raise such concerns.

48. The representative of Kenya supported New Zealand's point that the notification supplied by government authorities would be sufficient because those authorities would have verified whether the information provided by the applicant was legal and valid or if the geographical indication had fallen into the public domain.

49. The representative of the European Communities said that he rejected the suggestion made by some delegations that his delegation was seeking to bring new obligations that were not in the TRIPS Agreement into the system by requiring the notification of the legal instruments by which the geographical indication was protected. This was not the case, because the obligations that would be applied through the register were simply those that all Members already had to comply with and which were contained in Section 3, Part II of the TRIPS Agreement. In fact, this requirement to supply the basis for the protection would simply help Members to implement Article 24.9 of the Agreement, therefore clarifying the cases in which they had an obligation to protect geographical indications under the Agreement. Obviously, if the geographical indication was not protected in the country of origin, there would be no such obligation. In such cases, Members would still retain the option of protecting such geographical indications. Therefore, rather than bringing in new obligations, his delegation was simply focusing on making sure that Members would comply with the obligations that they already had under the Agreement.

50. As to the comments that supplying such information would make little sense, he welcomed the statement by the Canadian delegation, pointing out that in the joint proposal there was a provision that foresaw, at least, the information on the legal basis as an option. This therefore indicated that for the proponents of the joint proposal, such information was also considered as useful to the examining Member, because the obligation to protect geographical indications would only take effect once they were protected in the country of origin.

(ix) Translations of the notified GI

51. The representative of Japan said that similarly to the point his delegation had made concerning transliteration, the translation of geographical indications had a close relationship with the legal effects and with the implications for the workload of national authorities. This was because translation could require transliteration. This would be a key element for Japan and other Members to check in relation to TRIPS requirements with regard to notified geographical indications and would directly influence the capacity of the competent authority depending on what degree of legal effects would flow from the system. In this regard, Japan favoured the joint proposal approach, which was voluntary, less burdensome and non legally binding. The language issue should be carefully considered in the design of the notification part of the system.

52. The representative of the European Communities recalled that his delegation had already commented on the question of translations under the subheading on transliterations. To the question

posed by the Chairman in paragraph 8 of the statement: "if the system were to be administered by the WTO, should there be a requirement to make available any translation into one of the three WTO languages of a notified geographical indication for which the language of origin was another language?", his delegation's reply was affirmative. However, with respect to the Chairman's observation that such a translation "would only be provided for information purposes", he recalled what he had said before, namely that translations as well as transliterations indeed carried legal effects with the understanding, in full respect of the principle of territoriality, that the final decision or determination of what the right translation was would still be in the hands of the examining Member. The EC proposal was therefore fully compliant with this principle and the principle that it would be up to the examining Member to decide which translations should carry the binding effects that the register would include. Obviously, a different question was the issue of what these legal effects would be. The fact that the obligations Members had to implement were those in the TRIPS Agreement was relevant, for among these obligations there were those under Article 23.1 of the Agreement, which included an express reference to translations. The EC proposal was proposing a presumption of the eligibility for protection under the TRIPS Agreement for notified geographical indications for wines and spirits. This would mean, in particular, that participating Members would enjoy a favourable presumption to enjoy the protection under Article 23.1 and hence, a favourable presumption against the use of translations by third parties. This demonstrated that effects would flow from the register regarding translations of notified geographical indications. As he had already mentioned, the same would be true if the use were based on Article 22, for it would be possible to conceive specific uses of a geographical indication which could mislead the public as to the geographical origin. For all these reasons, he believed that indicating that translations would be for information purposes only was slightly misleading. The message that the system would need to convey was that it remained in the hands of the national authorities to decide what the final or binding translation should be. He added that translations provided by the notifying Member could also be a useful tool for the examining Member.

53. Recalling some of the earlier interventions made by his delegation at this meeting, the representative of the United States expressed concern with the provision of any sort of translations in the notification system, particularly in view of the impact it might have at the national level. It should be recognized that decisions made concerning protection based on translations must be made by the courts in light of consumers in the country where protection was sought, which was a fundamental issue related to the principle of territoriality of intellectual property rights. In that light, he did not see the need for translations, even into the working languages of the WTO. The way the Joint Proposal Group envisioned this in its proposal was that the notification would be made in English, French or Spanish and the geographical indication itself would be identified as it appeared on the wine or spirit good in the territory of that notifying Member. This would be the only information required for the system. Any other information provided in the notification, such as translations or any increased scope of protection that would need to be applied would be handled according to the national law as for any application made at the domestic level.

54. He said that his delegation also shared some of the concerns expressed by Japan with respect to transliterations, although as he had mentioned previously, he believed that there was some difference with regard to translations. For example, there might be room to envision transliterations, for information purposes, when terms were written in characters other than Latin characters. This was, however, different from the issue of translations, which was specifically addressed in Article 23.1, and would raise great concern about the scope of protection that might be envisaged under the system. He understood the European Communities' comments on this issue and how this would make sense from their viewpoint, given the fact that their proposed system would envision extraterritorial legal effects, including mandating the protection of certain terms and their translations. This was not, however, how his delegation read the mandate of Article 23.4, which was to facilitate, and not to increase, protection.

55. The representative of Australia supported the comments made by the United States in relation to the issue of translations. One of her delegation's greatest concerns regarded the relationship of this element with the issue of legal effects as proposed by some delegations, for they would result in the increase of protection of geographical indications. She said that it was reassuring to hear from delegations that they all agreed that the principle of territoriality also applied in this context, which would mean that it would be for a Member to decide, in fulfilling its obligations under Article 23 of the TRIPS Agreement, what would be the translation of a geographical indication in its own territory. Nevertheless, she wondered what the purpose would be of including a requirement to provide terms in translation, either into WTO working languages or, more importantly, into other languages. The answer had been that it would be a useful tool for examiners when looking at the register, but her impression was that they would be useful only if the result being sought was a situation where all Members would effectively protect all terms notified, including the suggested translation. Therefore, for these reasons, her delegation had concerns with a mandatory requirement in relation to translations, as indicated in the EC proposal.

56. The representative of the European Communities said that under any conceivable system, including those that were on the table, a translation would be useful for any Member receiving a copy of the notification. He recalled that all Members had expressed that they were conscious of the need to avoid burdens resulting from the system on WTO Members, in particular developing country Members. For example, translations provided by the notifying Member could be helpful to a small developing country with limited IP office capacity that would be confronted with a geographical indication in a script that it did not read or with a transliteration which meant nothing to it. All Members subscribed to the principle of territoriality, including the European Communities, and there was nothing in the EC proposal that was extraterritorial in nature. If the EC proposal were extraterritorial, then the Madrid Agreement, to which the United States was a party, would also be.

57. The representative of Switzerland associated himself with the statement of the European Communities and said that his delegation also believed that information on translations could be extremely helpful in the context of the system to be established and for Members to take into consideration at their national level. Although providing translations should be voluntary, he would nevertheless encourage Members notifying their geographical indications to provide such additional information. He recalled that Article 23 of the Agreement already contained an obligation to provide protection to geographical indications in translated form. In that respect, he believed that such information, even if provided on a voluntary basis, should have a legal effect to the degree that was already provided for in Article 23.1, but not beyond. Such information would be useful and would not result in any extraterritorial consequence, as final determinations regarding translations would still remain with national authorities.

(x) The product for which the protection is sought

58. The representative of the European Communities said that, on this particular issue, knowing the type of good was certainly relevant. However, as with all the other elements dealt with so far, this one was also linked to the legal effects which each proposal might entail. As far as the EC proposal was concerned, this issue was certainly relevant, given that the legal effects would be based on certain presumptions which would refer to Articles 22 and 23 of the TRIPS Agreement. Obviously, whenever the relevant article was Article 23 the presumption would be valid within the same category of goods. This was something that his delegation considered as covered and implicit in the definition itself, given that in Article 22.1 there was a reference to geographical indications identifying a specific good. His delegation could see, but without prejudging its position with regard to the scope of the register, that clarifying the product for which the protection was sought could be relevant in order to make the system clearer.

(xi) Information on the quality, reputation or other characteristics of the goods

59. The representative of the European Communities said that, although this element was part of the Hong Kong, China proposal, his delegation considered it acceptable and perhaps even already implicitly covered by paragraph 2.3 of the EC proposal, which, as an option, made it possible to submit any other information that might be useful in facilitating the protection of the geographical indication. This was also related to the examination as to whether the geographical indication actually met the definition, because these features were elements of the definition. As the examination and decision as to whether a notified term was a geographical indication were in the hands of the examining Member, a concept that all Members agreed with, it was clear that providing them with such information would be useful.

60. The representative of Argentina asked whether the proposal which the Chairman had described as requiring such information was the one made by Hong Kong, China. She further said that submitting such information would not be relevant. These elements were connected to the issue of the definition under Article 22.1. In this regard, she recalled the points made under the sub-heading dedicated to this issue.

61. The Chairman clarified to Argentina that in paragraph 2(a) of the Hong Kong, China proposal there was indeed a reference to "the name, the place or area, quality, reputation or other characteristics, and goods indicated by the geographical indication."

62. The representative of the United States said that his delegation also shared the concern raised by Argentina that it should be mandatory for a Member to show that a geographical indication met the definition of Article 22.1. This requirement would be unnecessary and would have systemic consequences. If it was the intention in the Chairman's statement to have such a requirement, then his delegation would have some trouble with it. If the intention was to fulfil some other need, then perhaps he could consider it further.

(xii) Information on the owner of the GI

63. The representative of the European Communities said that his delegation believed that this was the type of information that could be usefully included in the notification, particularly for examining Members. According to the EC proposal's paragraph 2.3(b) this was an optional element. The EC proposal, as other proposals, was based on the principle that GI right holders would need to go to third country markets to assert their rights and, when doing so, they would be in touch with national authorities and courts. Therefore, making such information available would simply be a further tool to help the good functioning of the system towards its mandated objective, which was to facilitate the protection of geographical indications.

64. The representative of the United States said that this information was not necessary, nor should it be made mandatory. The joint proposal was quite flexible in the discretionary information that could be supplied on how the notified geographical indication was protected in its territory, including, for example, on ownership. He also expressed concern with some of the language used to describe this element, particularly the reference to persons entitled to use the geographical indication for production in the notifying Member. Recalling that his country protected a number of geographical indications through certification marks, he said that it was not clear to his delegation exactly how such persons would be defined. It would perhaps depend on how one would read such language. If it meant certain parameters stating how a geographical indication would be defined by the certifier under a certification mark, then it would be a reading his delegation could agree with. If it were about identifying specific individuals, or specific groups of individuals, this could have implications for the United States' domestic system.

(xiii) Date of protection

65. The representative of Switzerland said that his delegation approached this element similarly to the two previous elements, namely that this information would be useful for the administration of the system as well as for Members when handling geographical indications at the national level. However, such information should be voluntary and flexible enough not to prejudice Members' flexibilities under Article 1.1 of the TRIPS Agreement. Looking at the different proposals on the table, he said this did not seem to be a major point of divergence and wondered whether this could be moved up to the group of points of convergence. For example, the language used by the EC and Hong Kong, China proposals on this issue did not seem to be of a mandatory nature. The EC proposal only indicated that the information should be provided "where available". Similarly, the Hong Kong, China proposal referred to "any commencement or expiry date of protection", i.e. if there was any such date.

66. The representative of the European Communities agreed that this was an issue on which Members were perhaps not too far away from agreement. As pointed out in the Chairman's statement, it had to be recognized that such information might not be available in all cases. The issue of date of protection was clearly linked to the question of the instrument by which the geographical indication was protected. Reiterating that the EC proposal would not affect the freedom of every Member to implement the obligations under Section 3 of Part II of the TRIPS Agreement in the way that best fitted their legal systems, he said that, if the information on the date was available, then it should be provided. Dates were important in many parts of the TRIPS Agreement, such as, for example, in Article 24.5, where the date of protection of a geographical indication in the country of origin was relevant to define the limitation of the rights of the geographical indication *vis-à-vis* a prior trademark. Another example was in Article 24.9, which covered the case where a geographical indication ceased to be protected.

67. The representative of Chile said that he agreed with the Swiss delegation's point that perhaps there would be some degree of convergence on this issue among Members.

68. The representative of the United States said that he appreciated the softer nature of the EC and Hong Kong, China proposals on this point, which would make it closer to an agreement than some others. Nonetheless, he expressed concern about this if it were made mandatory, as it still appeared that there was a distinction between those two proposals and the joint proposal. The information involved drew back to the question of what the purpose of the system was and, in looking at how to facilitate protection, this information would not be necessary to achieve that goal. This also raised some questions: what was the purpose of requiring a date of protection? Was it to use that date as a basis to provide protection in a third party's jurisdiction? That seemed to be the case in at least one, if not two, of the proposals.

69. The representative of Argentina said that the information on the date of protection was irrelevant. She also recalled that the TRIPS Agreement had only been binding for the last ten years and that there was no obligation to protect any of the subject-matter it dealt with prior to its entry into force. This fact should be borne in mind when talking about the issue of the date.

(d) Chair's concluding remarks

70. The Chairman said that Members had had a useful discussion, which had served to identify more clearly where some of the points of convergence were and also where further discussion was required. The point had been made by several delegations that there was a limit to how far it was possible to go in refining the approach in regard to notification in the absence of a clearer understanding of the system to be negotiated as a whole, including the legal effects or consequences of registration.

C. OTHER BUSINESS

1. Report to the TNC

71. The Chairman said that the Chair of each Negotiating Group was expected to submit a report to the next session of the TNC on his own responsibility and that the so-called "Timelines for 2006" document envisaged the tabling of a working document by this Special Session by July of this year. He said that these matters could only be addressed at present on the basis of the situation as it stood at the moment of the current meeting. Therefore, should there be a material change, for example should the formal TNC meeting be postponed and some significant developments occur in the overall negotiations, it might be necessary to revisit these matters. Hence, taking things as they stood at the present meeting, he said that his own assessment of the situation was that the so-called "side-by-side document" (TN/IP/W/12) continued to represent a valid description of the state of play in the Special Session, perhaps combined with some additional observations. He did not see that it would be feasible to prepare, on the basis of the discussions so far this year, a paper which would represent a significant advance over that document. His thinking was to submit a report to the TNC which drew attention to the side-by-side document as a valid description of the state of the proposals on the table in the Special Session, together with some additional observations, and which would indicate his intention to work with delegations on the preparation of a new working document. These observations would be as follows:

- First, the further discussion that had taken place this year on the basis of the list of priority concerns drawn up in March and the side-by-side document had been useful in further clarifying the issues to be resolved in these negotiations.

- Second, in regard to notifications under the system to be negotiated, the Special Session had had useful discussions which had served to identify where common ground existed and to clarify certain other questions that still needed to be settled. While this work had been useful and should be valuable in contributing to the development of a unified text in this area, there were limits to how far this could go without greater clarity on the key issues of participation and legal effects.

- On these key issues, while the discussion this year had helped to crystallize the points of difference, it had to be acknowledged that positions remained far apart and it remained difficult to identify where the landing zone might lie. Some Members had indicated a readiness to consider, at least to some extent, ways of taking account of the concerns of other delegations, but often with the proviso that this would depend on reciprocal movement by those other delegations and/or on the overall progress of the Round. It was also not clear how far the flexibility to which some delegations had alluded so far would, if realized, go in bridging the gaps that existed.

- Further work was also required on the issue of costs and administrative burdens and a range of other matters. Once again, it would be difficult to carry this work much further without greater clarity on the key questions of participation and legal effects.
- He would also intend to indicate the Chair's view that progress in this Special Session towards establishing a common basis for the final negotiating phase would require all delegations to be creative in finding new flexibility. It would not be possible to find a solution unless all delegations were willing to move.

72. The representative of the European Communities said that the reason his delegation had been insistently asking the Chairman to produce this working paper was because the Hong Kong ministerial meeting had instructed the Special Session to intensify the negotiations in order to conclude them this year. He also recalled that in previous meetings his delegation had stated that it

was prepared to be flexible in relation to some core issues and had explained that some of those flexibilities had already been included in the EC proposal. The best reflection of this spirit was the European Communities' request that the Chairman produce a compromise proposal, explicitly accepting that any compromise might not include all of the elements put forward by the EC proposal.

73. He said that what Members had undertaken so far at the present meeting on notifications, for example, was valid as intensification of work. It had been a useful exercise, which had helped Members to clarify more areas where there was common ground. Nonetheless, he believed that the working document announced by the Chairman in the March 2006 meeting should be presented. With regard to the Chairman's remark indicating that so far there had not been enough progress to allow for such a document to be on the table, he said that it would be precisely the production of this working document that would help Members make progress rather than simply wait for sufficient progress to become apparent. At the June 2006 meeting his delegation had said that it was open to what the precise nature of this document could be and that its preference was for a compromise document. It had also suggested that a reflections paper might be useful. After the discussions of the present meeting, he believed that it would be possible for the Chairman to present such a text, which should go beyond the side-by-side document in areas where Members were not too far apart and suggest alternatives or include ideas on the way forward in other areas. This could perhaps help Members to bridge gaps and actually push the process forward. Simply keeping the side-by-side text would not be an option as it would even mean moving backwards from previous texts that already contained some additional elements of convergence.

74. As to the report to the TNC, his delegation was of the opinion that it should underline the importance of giving some guidance in relation to the core issues of legal effects and participation because many of the other elements of the system would depend on these two issues. A combination of a working document with some pointers into certain directions could be a useful way forward.

75. The representative of New Zealand said that it was clear that Members were not operating in isolation in the Special Session and that they all knew what was or was not going on around them. The Chairman had correctly reflected the context in which these negotiations were taking place and had indicated that he would reflect any progress and developments as appropriate. It was hard to view one part of the mandate Members had been given without being conscious of the other negotiating groups. In this regard, he recalled that a sequence had been established in these negotiations in which agriculture and NAMA modalities featured prominently. Against this background, he said that it was difficult to see how other negotiating groups could come forward with something that was out of sync with the sequence that had been established in these overall negotiations. In this light, the side-by-side document was a realistic and fair representation of the status of the negotiations in this Special Session. His delegation was satisfied with the way the Chairman had characterized his proposed report to the TNC.

76. The representative of Australia said that the Chairman's suggested report to the TNC was a good summation of the discussions Members had had. He said that, although this year's discussions at the Special Session had been useful in identifying common ground, there were limits to this usefulness due to the need to clarify the key issues of participation and legal effects. As the positions of the key proponents on these two key issues remained far apart, hence the Chairman's impossibility to identify a landing zone, it would be difficult to carry the work further without clarification on those two issues. Therefore, there was currently no alternative to the side-by-side document.

77. The representative of Switzerland said that the elements proposed by the Chairman for inclusion in his next report to the TNC reminded him of previous reports, namely those prepared in July 2003 for the Cancún Ministerial Conference and in November 2005 for the Hong Kong Ministerial Conference. He recalled that the side-by-side document, mentioned by the Chairman as a text that could serve as a working document, dated back to September 2005. Against this background,

his delegation would be looking for a more ambitious document, namely a compromise text with added value reflecting the length and intensity of these negotiations and which would be in line with the mandate. This compromise approach would be based on the proposals on the table and would enable delegations to conclude these negotiations. He understood the Chairman's discomfort in coming up with such document since the whole negotiation was currently in a zone where few probably felt comfortable. However, he believed that Members needed to make particular and special efforts to get back into a "comfort zone" and therefore needed to make progress in all areas of negotiations, including this one. In such a working document, the Chairman could, for example, more clearly identify, on the basis of the proposals on the table, what the landing zone would be after all these years of negotiations. The degree of difficulty in the selection of the various elements to be included would vary. For example, it seemed that it would be easier to find a compromise solution for several of the notification elements discussed at the present meeting. He thus encouraged the Chairman to try to arrive at such a proposal on most of the elements that were outstanding. As to the two key elements of legal effects and participation, which would present a particular challenge to the Chairman, one option would be to refer them to the TNC and ask for a clear guidance, namely a decision on those two elements, so that they could fit into the rest of the working document and be the basis for the future work.

78. The representative of the United States said that, in light of the current circumstances and consistent with the assessment offered by the Chairman, it would not be appropriate for the Chairman to propose a new compromise text as had been requested by the European Communities and Switzerland. On the purported flexibilities offered by the European Communities, he said that these were at best marginal and therefore did not address the main issues, including those aspects of the EC proposal that were well outside the mandate in Article 23.4 of the TRIPS Agreement. In that light, similarly to Australia, his delegation believed that what the Chairman had proposed was a good structure and an accurate assessment of the situation, as well as a positive way forward. His delegation also recognized the existence of the two key issues of legal effects/consequences of registration and participation and other important matters that would go even deeper than these two key issues. For example, it had significant concerns about certain elements envisioned in some of the proposals, such as compulsory negotiations. Therefore, in trying to work out an agreement between Members it would be important to take stock of this whole range of important issues. In conclusion, he supported the Chairman's suggested report and hoped that it could assist Members in their deliberations in the future as they strived to reduce their differences.

79. Reacting to New Zealand's point on the sequencing of the negotiations, the representative of the European Communities said that any attempt to delay one negotiation because one group was not moving should be undertaken with great care. He cautioned that making linkages could be an extremely dangerous endeavour and could certainly go in both directions. He said that the fact that one or two dates had been missed on certain issues did not necessarily mean that Members should consequently miss the dates for other issues. He stressed the fact that, while in these negotiations the production of a working document had been requested, in other committees the Chairpersons had been asked to produce full negotiating texts. It would indeed be helpful if the Chairman could produce a full negotiating text, but if this was not possible, he should at least produce, as mandated, a working document going beyond the simple side-by-side document.

80. As to the report to the TNC, and the point regarding the difficulty for the Chair to identify a landing zone, he urged the Chairman to look at this issue from another perspective and wondered whether he might at least note which parts of the territory were unsuitable for landing.

81. The representative of Chile agreed with the Chairman that the side-by-side document should be the working document, perhaps combined with some additional observations. He said that he was more optimistic than Switzerland and that, despite the fact that this document had not changed since

last September, he believed that progress had been made in clarifying certain questions and showing certain points of convergence.

82. The representative of Argentina said that these negotiations derived from a mandate arising from the Uruguay Round and had been conducted within the legal parameters of the TRIPS Agreement. Neither Doha nor any subsequent ministerial meeting had changed this fact. Therefore, delegations should refrain from making linkages with other negotiations and raising any false expectations. She believed, in view of the current status of the negotiations and the different positions on the key issues, that the side-by-side text should be the working document and that there was therefore no possibility, at least at the present juncture, for a compromise text. She could not see any flexibility on the key issues, a dilemma which could not be artificially resolved by any Chairman's text, as proposed by some delegations. Similarly, it would not be desirable to ask the TNC for political guidance while all these key issues still had to be resolved at the technical level. She therefore agreed with the report as suggested by the Chairman.

83. The representative of Japan said that he would like to echo the statements made on this issue by the other members of the Joint Proposal Group. Under the current situation, the most realistic approach would be for the Chairman to report factually to the TNC using the side-by-side document rather than preparing any compromise paper.

84. The Chairman said that he took note of all comments made and would reflect on them carefully, taking into account the approach being taken by the Chairs of other negotiating groups. For the time being he could not move any further than that, but would see how things were moving across the board.

2. Dates of the next meetings

85. The Chairman said that the Special Session had one formal meeting scheduled in the autumn. This would be on 27 October, back to back with the regular session of the Council for TRIPS. He believed that all that it would be wise to do at this stage was to confirm the date of 27 October and to take note of the readiness of delegations to meet as often as necessary in the coming months.